

**203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-6652-2022

Date of Decision: 31st August, 2022

Surjit Singh @ Titta

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Hitesh Chopra, Advocate for the petitioner.
Mr. Vipin Pal Yadav, Addl. Advocate General, Punjab.

AVNEESH JHINGAN , J.(Oral)

1. This is third petition filed seeking regular bail in FIR No. 131, dated 14th October, 2019, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and Section 207 of Motor Vehicle Act, 1988, registered at Police Station Rahon, District Shaheed Bhagat Singh Nagar. Earlier two petitions were dismissed as withdrawn with liberty to revive the prayer at a later stage.

2. The relevant facts are that the police party on 14th October, 2019, checked a car bearing registration No. PB-65-V-2825 near Bijli Ghar, Rahon driven by petitioner. In the car, there was a white colour bag, it's mouth was open and 4-5 boxes of Alprazolam tablets were lying on the seat. There was recovery of 16000 tablets of containing Tramadol Hydrochloride salt and 6000 tablets of Alprazolam. For conducting a personal search of the petitioner, Deputy Superintendent of Police was requested on mobile and he reached the spot in about 45 minutes.

3. Learned counsel for the petitioner submits that there is a

was not present. The contention is that only ten tablets were sent to FSL and entire details of the sample are not mentioned in the FSL report.

4. Learned State counsel opposes the prayer for grant of bail and submits that recovery is of a commercial quantity, petitioner is involved in two more FIRs under the Act. He relies upon Section 37 of the Act to oppose the bail.

5. From the car driven by the petitioner 22000 intoxicating tablets were recovered. It was a case of chance recovery. For the personal search of the petitioner, the Gazetted Officer i.e. DSP was called on the spot. The contention is that there is violation of Section 42 of the Act *prima facie* has no merits as recovery was from search of the car, more over, the issue is to be dealt at the time of the trial.

6. The Supreme Court in the judgment passed in ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, AIR 2021 SC 4476*** held as follows :-

“29. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial.”

(emphasis supplied)

7. The recovery was of a manufactured and factory packed drugs having the details of the ingredients and the salt. The contention that only ten tablets were sent for testing does not enhance case of the petitioner for grant of bail. At the time of trial it would be considered as to whether in

case of manufactured and factory packed drugs the entire batch is required to be sent for testing or not. Section 37 provides stringent provisions for granting bail in case where recovery is of a commercial quantity. The twin conditions mentioned in the Section 37 of the Act are required to be fulfilled.

8. The Supreme Court in ***Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022, held as under:***

"10. The provisions of Section 37 of the NDPS Act read as follows:

"[37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

12. The expression "reasonable grounds" has come up

for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadalieva Nodira ” 5, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

*“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. **The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.**” [emphasis added]*

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"18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of

the period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under [Section 37 of the NDPS Act.](#)"

9. No case is made out before this Court to prima facie conclude on reasonable ground that the petitioner is not guilty of offence under the Act. The involvement of the petitioner in two more cases under the Act leaves no scope for this Court to conclude that petitioner will not involve in another case, if he is granted bail. In case involving commercial quantity of contraband custody cannot be sole ground for granting bail.

10. The petition is dismissed.

11. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

**(AVNEESH JHINGAN)
JUDGE**

31st August, 2022

Parveen Sharma

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No